

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AUSTIN MARIASY,

Plaintiff,

- against -

FREE SPEECH SYSTEMS, LLC

Defendant.

Docket No. 1:17-cv-7026

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Austin Mariasy (“Mariasy” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Free Speech Systems, LLC (“Systems” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of three copyrighted Photographs of a Turning Point USA demonstration at Kent State University against save spaces saying safe spaces are for children, owned and registered by Mariasy, a professional photographer. Accordingly, Mariasy seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Mariasy is a professional Photographer in the business of licensing his Photographs to online and print media for a fee having a usual place of business at 1634 East Maine Street, #306, Kent, Ohio, 44240.

6. Upon information and belief, Systems is a limited liability company duly organized and existing under the laws of the State of Texas, with a place of business at 3005 South Lamar Blvd. Suite D109-317, Austin, TX 78704. At all times material, hereto, Systems has owned and operated two Websites at the URL's: www.NewsWars.com and www.InfoWars.com (the "Websites").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photographs

7. Mariasy photographed a Turning Point USA demonstration at Kent State University against safe spaces saying safe spaces are for children (the "Photographs"). A true and correct copy of the Photographs are attached hereto as Exhibit A.

8. Mariasy is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

10. The Photographs are registered with the United States Copyright Office and were given registration number VA 2-076-501.

B. Defendant's Infringing Activities

11. On October 20, 2017, Systems ran an article on the Websites entitled *Conservation Group Mocks 'Safe Space' Liberals by Dressing as Babies*. See <https://newswars.com/conservative-group-mocks-safe-space-liberals-by-dressing-as-babies> and

<https://www.infowars.com/conservative-group-mocks-safe-space-liberals-by-dressing-as-babies/>.

The articles prominently featured the Photographs. A true and correct copy of the Photographs on the Websites are attached hereto as Exhibit B.

12. Systems did not license the Photographs from Plaintiff for its articles, nor did Systems have Plaintiff's permission or consent to publish the Photographs on its Websites.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST SYSTEMS)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

15. Systems infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Websites. Systems is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by Systems have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

19. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

20. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST
SYSTEMS
(17 U.S.C. § 1202)

21. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-20 above.

22. When the Photographs were first published it contained a watermark on the bottom right of the Photographs stating "© Austin Mariasy All Rights Reserved", which is considered copyright management information under 17 U.S.C. § 1202(b). See Exhibit A.

23. Upon information and belief, in its Info Wars Website, Systems cropped out the watermark on the first Photograph. See Exhibit B.

24. Upon information and belief, Systems intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

25. The conduct of Systems violates 17 U.S.C. § 1202(b).

26. Upon information and belief, Systems falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

27. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Systems intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the

Photograph. Systems also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph.

28. As a result of the wrongful conduct of Systems as alleged herein, Plaintiff is entitled to recover from Systems the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Systems because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

29. Alternatively, Plaintiff may elect to recover from Systems statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Systems be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant Marriott be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of

copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);

5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
December 4, 2017

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